

AMENDMENT TO
NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS¹

PART 1 AMENDMENTS

1.1 Amendments

(1) National Instrument 81-102 Mutual Funds is amended by

(a) the deletion of the definition of "index mutual fund" in section 1.1 and the substitution of the following:

"index mutual fund" means a mutual fund that has adopted fundamental investment objectives that require the mutual fund to

(a) hold the securities that are included in a permitted index of the mutual fund or permitted indices in substantially the same proportion as those securities are reflected in that permitted index or those permitted indices, or

(b) invest in a manner that causes the mutual fund to replicate the performance of that permitted index or those permitted indices;" and

(b) the addition of the following definition to section 1.1, after the definition of "permitted gold certificate":

"permitted index" means, in relation to a mutual fund, a widely quoted market index that is

(a) administered by an organization that is not affiliated with any of the mutual fund, its manager, its portfolio adviser or its principal distributor, or

(b) widely recognized and used;".

(2) National Instrument 81-102 is amended by

(a) the addition of the following as subsection 1.3(3):

"(3) In this Instrument, a "simplified prospectus" includes a "prospectus", a "preliminary simplified prospectus" includes a "preliminary prospectus" and a "*pro forma* simplified prospectus" includes a "*pro forma* prospectus"; and

(b) the deletion of item 1 of paragraph (b) of the definition of "sales communication", and the renumbering of existing items 2 through 6 of that paragraph as items 1 through 5;

(c) the deletion of the words "prospectus or" in each of paragraph 1.2(a), paragraph 8.1(a), paragraph 17.3(2)(a) and paragraph 20.4(b);

(d) the addition of the word "simplified" immediately before the word "prospectus" in paragraph 1.2(b); and

(e) the deletion of the words "preliminary prospectus or" and "prospectus or" in subsection 15.4(9).

(3) Section 2.1 of National Instrument 81-102 Mutual Funds is amended by the addition of the following as subsections 2.1(5), (6) and (7):

"(5) Despite subsection (1), an index mutual fund, the name of which includes the word "index", may purchase a security, enter into a specified derivatives transaction or purchase index participation units if required to allow the index mutual fund to satisfy its fundamental investment objectives.

(6) A mutual fund shall not rely on the relief provided by subsection (5) unless

(a) its simplified prospectus contains the disclosure contemplated by subsection (5) of Item 9 of Part B of Form 81-101F1 Contents of a Simplified Prospectus; and

(b) the mutual fund has provided to its securityholders, not less than 60 days before it first relies on the relief provided by subsection (5), written notice that discloses that it may, from time to time, rely on that relief and that contains the disclosure contemplated by subsection (5) of Item 9 of Part B of Form 81-101F1.

(7) A mutual fund is not required to provide the notice referred to in paragraph (6)(b) if each simplified prospectus of the mutual fund since its inception contains the disclosure referred to in paragraph (6)(a).".

(4) National Instrument 81-102 is amended by

(a) the addition of the words "or regulator" immediately after the words "securities regulatory authority" in subsection 5.5(1); and

(b) the addition of the following as subsection 5.5(3):

"(3) Despite subsection (1), in Ontario only the regulator may grant an approval referred to in subsection (1)."

(5) National Instrument 81-102 is amended by the substitution of the word "affiliate" for the word "subsidiary" in paragraph 3(b) of section 6.3.

(6) National Instrument 81-102 is amended by the deletion of the words "immediately before the close of business" in paragraph 9.4(4)(a).

(7) National Instrument 81-102 is amended by the deletion of subsection 15.4(12).

(8) National Instrument 81-102 is amended by the deletion of subparagraph 15.6(1)(a)(i) and the substitution of the following:

"(i) the mutual fund has offered securities under a simplified prospectus in a jurisdiction for 12 consecutive months, or the asset allocation service has been operated for at least 12 consecutive months and has invested only in participating mutual funds each of which has offered securities under a simplified prospectus in a jurisdiction for at least 12 consecutive months, or".

(9) National Instrument 81-102 is amended by the deletion of subsection 16.1(1) and the substitution of the following:

"(1) A mutual fund may disclose, in a simplified prospectus, annual information form or annual financial statements, its management expense ratio only if the management expense ratio is calculated for a financial year of the mutual fund and if it is calculated by

(a) dividing

(i) the total expenses of the mutual fund, before income taxes, for the financial year, as shown on its income statement,

by

(ii) the average net asset value of the mutual fund for the financial year, obtained by

(A) adding together the net asset values of the mutual fund as at the close of business of the mutual fund on each day during the financial year on which the net asset value of the mutual fund has been calculated, and

(B) dividing the amount obtained under clause (A) by the number of days during the financial year on which the net asset value of the mutual fund has been calculated; and

(b) multiplying the result obtained under paragraph (a) by 100."

(10) National Instrument 81-102 is amended by the addition of the following as subsections 16.1(2) and (3):

"(2) A mutual fund may disclose, other than in a simplified prospectus, annual information form or annual financial statements, its management expense ratio only if the management expense ratio is calculated for the 12 month period referred to in subsection (3) and if it is calculated by

(a) dividing

(i) the total expenses of the mutual fund, before income taxes, for the 12 month period,

by

(ii) the average net asset value of the mutual fund for the 12 month period, obtained by

(A) adding together the net asset values of the mutual fund as at the close of business of the mutual fund on each day during the 12 month period on which the net asset value of the mutual fund has been calculated; and

(B) dividing the amount obtained under clause (A) by the number of days during the 12 month period on which the net asset value of the mutual fund has been calculated; and

(b) multiplying the result obtained under paragraph (a) by 100.

(3) When a management expense ratio for a mutual fund is calculated under subsection (2),

(a) the mutual fund shall calculate and allocate expenses in the 12 month period referred to in subsection (2) in a manner consistent with the calculation and allocation of expenses for the income statement that forms part of the annual financial statements of the mutual fund; and

(b) the 12 month period referred to in subsection (2) shall end

(i) on the last day of a calendar month,

(ii) if the management expense ratio is presented in an advertisement, not more than 45 days before the date of the appearance or use of the management expense ratio in the advertisement in which it is included, and

(iii) if the management expense ratio is presented or disclosed in a document or communication other than an advertisement, not more than three months before the date of first presentation or publication of the document or communication."

(11) National Instrument 81-102 is amended by renumbering subsections 16.1(2) and (3) as subsections 16.1(4) and (5), respectively.

(12) National Instrument 81-102 is amended by the addition of the following as subsection 16.1(6):

"(6) The requirements to provide note disclosure contained in subsections (4) and (5) do not apply when a mutual fund provides its management expense ratio to a service provider that will arrange for public dissemination of the management expense ratio, if the mutual fund indicates, as applicable, that management fees have been waived or that management fees were paid directly by investors during the period for which the management expense ratio was calculated."

(13) National Instrument 81-102 is amended by the renumbering of subsections 16.1(4), (5), (6), (7) and (8) as subsections 16.1 (7), (8), (9), (10) and (11), respectively.

(14) National Instrument 81-102 is amended by the deletion of section 16.2 and the substitution of the following:

"16.2 Fund of Funds Calculation - For the purposes of subparagraphs 16.1(1)(a)(i) and 16.1(2)(a)(i), the total expenses of

a mutual fund that invests in securities of one or more other mutual funds is equal to the sum of:

(a) the total expenses incurred by the mutual fund that are for the period that the calculation of management expense ratio is made and that are attributable to its investment in each underlying mutual fund, as calculated by

(i) multiplying the total expenses of each underlying mutual fund, before income taxes, for the period, by

(ii) the average proportion of securities of the underlying mutual fund held by the mutual fund during the period, calculated by

(A) adding together the proportion of securities of the underlying mutual fund held by the mutual fund on each day in the period, and

(B) dividing the amount obtained under clause (A) by the number of days in the period; and

(b) the total expenses of the mutual fund, before income taxes, for the period."

PART 2 EFFECTIVE DATE

2.1 Effective Date - This Amendment comes into force on !, 2000.

¹This instrument will amend National Instrument 81-102 ("NI81-102"). The purpose of this amending document is to make a number of changes that the Canadian Securities Administrators consider appropriate at this time following the coming into force of NI81-102 on February 1, 2000. This amending instrument addresses some issues that have been brought to the attention of the CSA following the implementation of NI81-102.

2. This amending instrument is being published concurrently with proposed amendments to the Companion Policy to NI81-102, which also are being included in order to address some issues that have come to the attention of the CSA in connection with the Companion Policy.

In addition, this amending instrument is being published concurrently with proposed amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure ("NI81-101"), Form 81-101F1 Contents of Simplified Prospectus and Form 81-101F2 Contents of Annual

Information Form. That amending instrument amends disclosure requirements contained in NI81-101 and those forms.

For a detailed discussion of the proposals contained in this amending instrument, see the Notice that is published with this Instrument.

The CSA have already proposed amendments to NI81-102, the Companion Policy to NI81-102 and Forms 81-101F1 and 81-101F2 to, among other things, permit mutual funds to enter into securities lending, repurchase and reverse repurchase agreements. Those proposed amendments were published for comment in January 2000 and the comment period expired on April 30, 2000. The CSA expects that those amendments will be in force before the amendments contemplated by this instrument. The numbering of section references in this instrument assumes that the "securities lending/repo amendments" are already in force and takes into account numbering changes made by those amendments.